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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,385	09/17/2003	Lewis George Gradon	1171/41403	4417
279	7590	11/14/2006	EXAMINER	
TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD. 105 WEST ADAMS STREET SUITE 3600 CHICAGO, IL 60603			LOPEZ, AMADEUS SEBASTIAN	
		ART UNIT		PAPER NUMBER
		3771		
DATE MAILED: 11/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/664,385	GRADON ET AL.
	Examiner	Art Unit
	Amadeus S. Lopez	3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 September 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,14 and 16-25 is/are rejected.
- 7) Claim(s) 2-13, and 15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

**DETAILED ACTION**

***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09097832, filed on 6/16/1998.

***Response to Amendment***

The examiner acknowledges the amendments made to the abstract, specification, and claim 12 and hereby withdraws the objections as set forth in the office action filed on 6/05/2006.

The examiner acknowledges the amendment made to claim 16 and hereby withdraws the 35 U.S.C. 112, second paragraph rejection as set forth in the office action filed on 6/05/2006.

***Response to Arguments***

Applicant's arguments, see pages 12-13, filed 09/06/2006, with respect to the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Rush et al (5261272) have been fully considered and are persuasive. The 35 U.S.C. 102(b) rejection of claim 1 as being anticipated by Rush et al has been withdrawn.

Applicant's arguments filed 09/06/2006, with respect to the rejection of claims 1 and 14-25 have been fully considered but they are not persuasive. In line 21 on page 13 to line 9 on page 14, the applicant argues "the examiner has been overly broad with his interpretation of the word tooth, as well as the interpretation of the word depression." The examiner reiterates that in the broadest reasonable interpretation both the tooth

and depression as labeled in the figure 1 provided in the prior office action still read on the claims. The tooth is reasonably interpreted to be an extension from the body of the sensor, which in this case is the larger cylindrical portion of the body of the sensor that fits within the depression provided in the breathing conduit. The applicant has not provided any particular definition or structural limitations of the "tooth" and "depression" in the claims to warrant a withdrawal of the rejection, because as it stands, William still discloses a tooth and depression that anticipates the breathing circuit component of claim 1 and 14. Therefore, the rejections as set forth in the office action filed on 6/05/2006 with regards to the William reference stand and are hereby repeated.

With regards to the arguments made in response to the rejections of claims 15-25, the applicant simply stated that these claims are dependent upon claims 1 and 14, which the applicant submits is allowable. Since the rejections to claims 1 and 14 have been maintained and no argument has been made with regards to claims 15-25, the rejections as set forth in the prior office action with regards to the William reference stand and are hereby repeated.

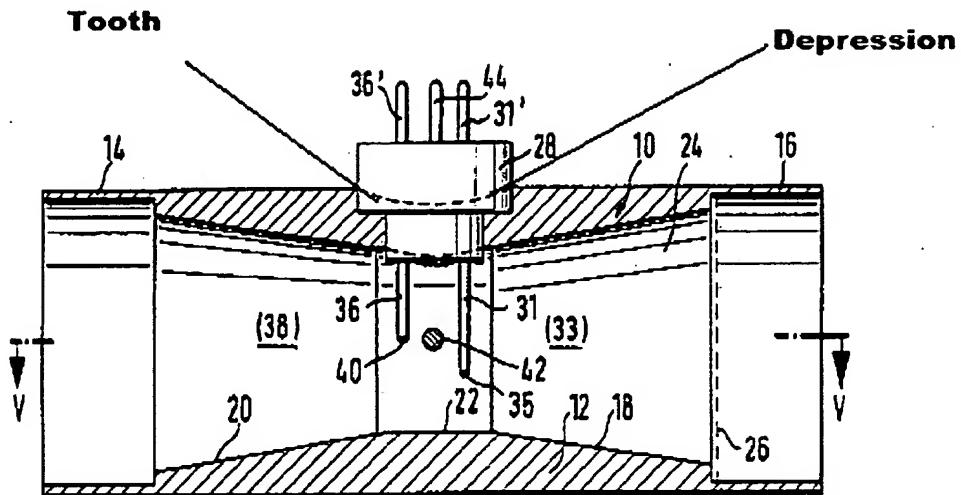
#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 1. Claims 1 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4363238 to William.**
- 2. With regards to claim 1, what is taught and shown by William in Fig. 1 below is a breathing circuit component or connector having an interior for conveying respiratory gas comprising: a sensor entry port (crossbore passage leading into interior of conduit; Col. 2, lines 61-66) configured to receive a sensor (28; contains sensing elements 34, 35, and 40), and a locating depression (labeled in diagram below as the dotted line portion marking the depression from the outer surface of the conduit) configured to receive a complementary locating tooth (labeled below; examiner is using a reasonable broad interpretation of the word tooth to be an extension from the body of the sensor which in this case is the larger cylindrical portion of the body of the sensor that fits in the depression) from a sensor, the interconnection of said depression and a tooth providing a predetermined orientation of a sensor within said interior.**



**Fig. 1**

3. **With regards to claim 14, what is taught and shown by William in Figs. 1-3 is a breathing circuit component having an interior for conveying respiratory gas comprising: a gas inlet (14) communicating with said interior and configured to connect to an outlet of humidifier or other breathing assistance apparatus (respirator; Col. 2, lines 53-55) a gas outlet (16) communicating with said interior and configured to connect to a conduit (Col. 2, lines 53-55), a sensor entry port (crossbore passage leading into interior of conduit; Col. 2, lines 61-66) configured to receive a sensor (28; contains sensing elements 34, 35, and 40), and a locating depression (labeled in Fig. 1 above as the dotted line portion marking the depression from the outer surface of the conduit) configured to receive a complementary locating tooth (labeled in Fig. 1 above; examiner is using a reasonable broad interpretation of the word tooth to be an extension from the body of the sensor which in this case is the larger cylindrical portion of the body of the**

sensor that fits in the depression) from a sensor, the interconnection providing a predetermined orientation of a sensor within said interior.

4. **With regards to claim 15**, what is taught and shown by William in Fig. 1-3 is a breathing circuit component wherein said sensor entry port (crossbore passage leading into the interior of the conduit; Col. 2, lines 61-66) comprises an annular cylinder having a passage communicating with and extending from said interior (Fig. 1; passage formed by cross bore shown by the dotted lines starting at the interface between the body 12 and the hollow conduit and ending at the interface between the body and the outer surface of the housing, which does extend from the interior which is being defined as the interface between the hollow conduit and the beginning of the body 12), said passage being substantially perpendicular to said interior.

5. **With regards to claim 16**, what is taught and shown by William in Figs. 1-3 is a breathing circuit component wherein said locating depression comprises a notch (labeled in Fig. 1 above as the dotted line portion marking the depression or notch from the outer surface of the conduit) in the end of said cylinder distant said interior.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claims 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4363238 to William.**
7. **With regards to claim 17,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component with all the limitations of claim 16 as rejected above and 17 with the exception of the notch being substantially "V" shaped. What is taught and shown by William in Fig. 1 is a depression that is substantially "U" shaped. After reviewing the specification, the examiner has concluded that at no point in the disclosure does the applicant establish any criticality for utilizing a "V" shaped notch. Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have a notch that is V, U or any other shape that would be effective in locking two separate pieces together.
8. **With regards to claim 18,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component wherein a base, or bottom portion of the notch prior to the interior conduit, of the notch is rounded (Fig. 1).
9. **With regards to claim 19,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component wherein a diameter of said passage ensures a substantially

airtight seal against a sensor located therein (From Fig. 1 it is shown by William that the sensor body completely occludes the passage formed by the crossbore leading into the hollow conduit.

10. **With regards to claim 20**, what is taught and shown by William in Fig. 1-3 is a breathing circuit component with all the limitations of claims 19 as rejected above and 20 with the exception of having an inlet that includes an exterior surface comprising a tapered male portion configured to connect to a tapered female portion of an inner surface of an outlet of humidifier, or other breathing assistance apparatus. What is shown and taught by William is that inlet 14 is configured to be attached to a respirator conduit (Col.2, lines 53-55). It is also shown in Fig. 1 that the interior of the inlet 14 is tapered configured to connect to a tapered exterior surface of the respirator conduit. After reviewing the specification, the examiner has concluded that at no point does the applicant establish any criticality for utilizing an inlet having an exterior surface comprising a tapered male portion configured to connect to a tapered female portion of an inner surface of an outlet of a breathing device. Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to utilize an inlet that includes an inlet with either an interior or exterior surface comprising a tapered male portion configured to connect to a tapered female portion since both are effective means to connect two conduits.

11. **With regards to claim 21**, what is taught and shown by William in Fig. 1-3 is a breathing circuit component with all the limitations of claim 20 as rejected above and

wherein the gas outlet includes an inner surface (Fig. 1 shows tapered interior surface) configured to form a substantially airtight seal against an exterior surface of a conduit.

12. **With regards to claim 22,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component with all the limitations of claim 21 as rejected above and 22 with the exception of wherein the inner surface of the has outlet and the exterior surface of the conduit are permanently bonded. What is taught by William in Col. 2, lines 53-55 is that the inlet and outlet are capable of being attached to a conduit implying that is detachably attached to each other. After reviewing the specification, the examiner has concluded that at no point does the applicant establish any criticality for having the inner surface of the gas outlet and the exterior surface of the conduit being permanently bonded. Therefore it would have been an obvious matter of design choice by one of ordinary skill in the art at the time the invention was made to either have the inlets and outlets detachably attached to conduits, or permanently bonded to the conduits because both are effective means of securing the inlets and outlets to conduits forming airtight seals.

13. **With regards to claim 23,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component further comprising a flow sensor (28) having a substantially cylindrical exterior (Fig. 1) configured to form an airtight seal against said passage (crossbore passage leading into hollow interior of conduit), a sensing end (40 and 35) and a locating tooth (labeled in Fig. 1 above; examiner is using a reasonable broad interpretation of the word tooth to be an extension from the body of the sensor which in this case is the larger cylindrical portion of the body of the sensor that fits in the

depression) to mate with said locating depression (labeled in Fig. 1 above as the dotted line portion marking the depression from the outer surface of the conduit) and locate said sensing end in predetermined location or orientation within said interior.

14. **With regards to claim 24,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component with all the limitations of claim 23 as rejected above and 24 with the exception of the notch being substantially "V" shaped. What is taught and shown by William in Fig. 1 is a depression that is substantially "U" shaped. After reviewing the specification, the examiner has concluded that at no point in the disclosure does the applicant establish any criticality for utilizing a "V" shaped notch. Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have a notch that is V, U or any other shape that would be effective in locking two separate pieces together.

15. **With regards to claim 25,** what is taught and shown by William in Fig. 1-3 is a breathing circuit component wherein a base, or bottom portion of the notch prior to the hollow interior conduit, of the notch is rounded (Fig. 1).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

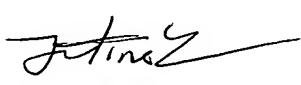
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amadeus S. Lopez whose telephone number is (571) 272-7937. The examiner can normally be reached on Mon-Fri 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Amadeus S Lopez  
Examiner  
Art Unit 3771

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11/8/06